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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,278	03/20/2002	Holger Thorso	66386-283-7	9536

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EXAMINER

NEWHOUSE, NATHAN JEFFREY

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 08/07/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

EC

Office Action Summary	Application No. 10/049,278	Applicant(s) THORSO, HOLGER	
	Examiner Nathan J. Newhouse	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/11/02(pre-amdt).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 8-10 is/are rejected.
- 7) ☒ Claim(s) 6 and 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 8-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 8-9 are rejected as the preamble of these claims are directed to "a lid for a package...", but claim 1, from which these claims depend, is directed to the package, both the lid and the container, thereby rendering these claims unclear and confusing as to what subject matter applicant is claiming.

In addition, claim 8 is further rejected as the preamble of this claim (before characterized) has already been set forth in claim 1.

Claim 10 is rejected as the preamble of this claim is directed to "a mold for manufacture of a lid", but claim 1, from which this claim depends, is directed to the package, both the lid and the container, thereby rendering this claim unclear and confusing as to what subject matter applicant is claiming.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Mitchell et al. (US 3,688,942).

Mitchell et al. teaches a container having a bottom (13) and a cylindrical sidewall (11) with an annular engagement portion (22). Mitchell et al. further teaches a lid (12) having a disc-shaped face portion (45) and a peripheral skirt forming a channel (50). The channel has a first sidewall (51), a second sidewall (53) and a bottom wall (52). The second sidewall has engagement means (61). The engagement portion and the engagement means have complementary engagement faces (31,66). There is a sealing member (57) located between the lid and the container. The engagement portion and the engagement means are shaped such that axial compression of the sealing member (57) is provided during application (as shown in figure 4) and is partially relieved when the complementary engagement faces (31,66) engage each other (as shown in figure 2).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mitchell et al. (US 3,688,942).

Mitchell et al. teaches everything except for the angle of the engagement faces (31, 66) having an angle of 15-40 degrees to the axis of the container. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the angle of the engagement faces between 15-40 degrees to the axis of the container, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mitchell et al. (US 3,688,942) in view of the Swiss reference (CH 672,473).

Mitchell et al. teaches everything except for the projection in the channel to compress the seal member.

The Swiss reference teaches a similar container and lid having a sealing member (14) therebetween. The Swiss reference further teaches a projection (16) in the channel to engage the sealing member to ensure compression of the sealing member when the lid is closed on the container to ensure that the container is leak proof. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a projection as taught by the Swiss reference in the channel of Mitchell et al. to engage the sealing member to ensure that the sealing member is compressed when the lid is closed on the container to ensure that the container is leak-proof.

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8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mitchell et al. (US 3,688,942) in view of the Swiss reference (CH 672,473).

As set forth in the above paragraph, Mitchell et al., as modified by the Swiss reference, teaches everything except for the projection that engages with the sealing member is on the lid instead of the container. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the projection that engages with the sealing member on the container instead of on the lid, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. In re Einstein, 8 USPQ 167.

Mitchell et al., as modified above, does not teach the sealing member being attached by adhesive in the channel. Official Notice is taken that it is well known in the closure art to attach sealing members to lids with adhesive to hold the sealing members in place. It would have been obvious to one of ordinary skill in the art at the time of the invention to attach the sealing member to the lid of Mitchell et al. with adhesive to hold the sealing member to the lid.

9. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mitchell et al. (US 3,688,942).

Mitchell et al. teaches everything except for the angle of engagement faces (31, 66) being 15-40 degrees to the axis of the container and that the sealing member is attached to the lid by adhesive. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the angle of the engagement faces between 15-40 degrees to the axis of the container, since it has been held that

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discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Official Notice is taken that it is well known in the closure art to attach sealing members to lids with adhesive to hold the sealing members in place. It would have been obvious to one of ordinary skill in the art at the time of the invention to attach the sealing member to the lid of Mitchell et al. with adhesive to hold the sealing member to the lid.

Allowable Subject Matter

10. Claims 6-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Claims 9-10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Crisci and Frankenberg et al. teach similar containers and lids with sealing members therebetween to what applicant is claiming.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group

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clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, email CustomerService3700@uspto.gov.

Any inquiry concerning the merits of the examination of the application from the examiner should be directed to Nathan J. Newhouse whose telephone number is (703)-308-4158. The examiner can normally be reached on Monday-Thursday 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on (703)-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-872-9302 for regular communications and (703)-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1148.

Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408


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Nathan J. Newhouse
Primary Examiner
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August 4, 2003